

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

§
§
**WSOU INVESTMENTS, LLC d/b/a,
BRAZOS LICENSING AND
DEVELOPMENT** § Civil Case No. 6:20-cv-585-ADA
§
§
Plaintiff, § JURY TRIAL DEMANDED
v. §
§
GOOGLE LLC, §
§
Defendant. §
§

APPOINTMENT OF COMMISSIONERS UNDER THE HAGUE CONVENTION AND
REQUEST FOR JUDICIAL ASSISTANCE – PERMISSION TO TAKE EVIDENCE BY A
COMMISSIONER UNDER ARTICLE 17 HAGUE EVIDENCE CONVENTION 1970 TO
THE CANTONAL COURT OF ZURICH, COURT ADMINISTRATION,
INTERNATIONAL JUDICIAL ASSISTANCE, FOR THE REQUEST FOR JUDICIAL
ASSISTANCE IN CIVIL MATTERS WITH COPY TO THE FEDERAL OFFICE OF
JUSTICE (FOJ), CENTRAL AUTHORITY FOR THE REQUEST FOR JUDICIAL
ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS:

The United States District Court for the Western District of Texas presents its compliments to the Federal Office of Justice and has the honor of requesting its assistance in obtaining evidence to be used in a civil proceeding now pending before this Court in the above-captioned matter, specifically by permitting commissioners appointed by this Court to take evidence under Article 17 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Convention”).

It appears to this Court that Brandon Ervin, whose professional address is: Google Switzerland GmbH, Gustav-Gull-Platz 1, CH-8004 Zurich, Switzerland, is a witness in this action and therefore has evidence relevant to this action. It is necessary for the purposes of justice and for the due determination of the matters in question between the parties that Brandon Ervin be examined

at the Swiss offices of Quinn Emanuel at Dufourstrasse 29, 8008 Zurich, Switzerland or, if required, at another location in the canton of Zurich, Switzerland, , under oath or affirmation. Given that the deposition would take place in the canton of Zurich, Switzerland, the competent authority for the granting of this request is the High Court of the Canton of Zurich, International Judicial Assistance, Hirschengraben 13/15, 8021 Zurich, Switzerland. As is customary, a copy of the present Letter of Request is sent to the Federal Office of Justice, Central Authority for the Request for Judicial Assistance in Civil and Commercial Matters, Bundesrain 20, 3003 Bern, Switzerland.

This Court, therefore, respectfully requests your assistance pursuant to the Hague Convention in obtaining the oral deposition testimony of Brandon Ervin under the terms set forth in this Letter of Request:

I. SUMMARY OF ACTION

1. The above-captioned actions are properly under the jurisdiction of and are now pending before the United States District Court for the Western District of Texas, Waco Division, 800 Franklin Avenue, Room 301, Waco, Texas 76701, United States of America. The United States District Court for the Western District of Texas is fully sanctioned as a court of law and equity and is authorized by Rule 28(b) of the Federal Rules of Civil Procedure to direct the taking of evidence abroad by Letters of Request.

2. The parties to the civil action pending in the United States District Court for the Western District of Texas are as follows:

a. Google LLC (“Google”) is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in California, USA. Witness Brandon Ervin is an individual who is employed by Google Switzerland GmbH and is a resident of Switzerland. Google is represented by JONES DAY, 1755 Embarcadero Road Palo Alto, CA 94303, USA, and Warren Lex LLP 2261 Market Street, No. 606 San Francisco,

California, 94114. Correspondence to Google can be faxed to its representatives at +1 (650) 739-3900, or emailed at the following email addresses: WSOU-Google@jonesday.com and caribou@matters.warrenlex.com.

- b. WSOU Investments, LLC d/b/a Brazos License and Development ("Brazos") is a limited liability corporation organized and existing under the laws of Delaware, with its principal place of business at 605 Austin Avenue, Suite 6, Waco, Texas 76701. Correspondence to Brazos can be faxed at (254) 651-3689, or emailed at the following email addresses: joseph.abraham@foliolaw.com; timothy.dewberry@foliolaw.com; cliff.win@foliolaw.com; alden.lee@foliolaw.com; greg@swclaw.com; mark@swclaw.com; and melissa@swclaw.com.

3. In the above-captioned action, Brazos has sued Google for infringement of United States Patent No. 8,737,961 (the "Patent-in-Suit") under the patent laws of the United States, 35 U.S.C. § 1 *et. seq.*

4. Brazos intends to depose Brandon Ervin, and the parties have agreed to conduct the deposition of Brandon Ervin, who will be located for such deposition in Switzerland, in accordance with Chapter II of the Hague Convention.

II. EVIDENCE REQUESTED

5. The parties have satisfied this Court that Brandon Ervin has material information related to this pending action for use at trial, and that justice cannot be completely done between the parties without his testimony.

6. The parties requested that this Court issue the present Letter of Request seeking your assistance in obtaining testimony from Brandon Ervin. The evidence to be obtained is oral testimony to be taken in Switzerland, and is intended to be used as evidence in the trial for this matter. Brandon

Ervin, who is a resident of Switzerland, has been apprised of his rights under Swiss law and has consented to being deposed in Switzerland.

7. The Court requests assistance in permitting the commissioners appointed by this Court to take testimony from Brandon Ervin, which will be given voluntarily. The topics of examination may include, but are not limited to:

- a. Brandon Ervin's role and duties as an employee of Google.
- b. Knowledge of documents related to and produced in this matter.
- c. Any topic for which Brandon Ervin is designated by Google pursuant to Federal Rule of Civil Procedure 30(b)(6).

8. This Court is satisfied that the testamentary evidence is relevant to the pending proceeding and is likely to be used at trial to assist this Court in resolving the dispute presented in the civil action before it. With the approval of this Court, the parties and this Court therefore seek permission to have commissioners take this testamentary evidence for the purpose of using such evidence at trial.

9. It is requested that the testamentary evidence be given in the English language, and on oath or affirmation. It is also hereby requested that the testimony be in the form of recorded deposition testimony upon questions communicated to the witness by U.S. counsel of the parties, acting as commissioners. It is requested that the testamentary evidence be given at some time agreeable to all involved in February or March 2023.

10. The parties have agreed on and the Court hereby appoints Mr. Olivier Buff to serve as commissioner ("the Swiss Commissioner"). Mr. Buff is a lawyer with the law firm Quinn Emanuel at Dufourstrasse 29, 8008 Zurich, Switzerland, and admitted to practice as an attorney in Switzerland. In case Mr. Buff will be unable to perform any of his tasks as Swiss Commissioner,

including the task to supervise the testimony of Brandon Ervin, he will be allowed to delegate the performance of such task(s) to another lawyer with the law firm Quinn Emanuel at Dufourstrasse 29, 8008 Zurich, Switzerland, which is also admitted to practice as an attorney in Switzerland. In his capacity as commissioner, Mr. Olivier Buff (or any delegate) will complete and oversee the following tasks: liaise with the Swiss authorities, including dispatch/submission of the present Letter of Request to the High Court of the Canton of Zurich, International Judicial Assistance, Hirschengraben 13/15, 8021 Zurich, Switzerland, and of a copy of the same to the Federal Office of Justice, Central Authority for the Request for Judicial Assistance in Civil and Commercial Matters, Bundesrain 20, 3003 Bern, Switzerland; act as an agent of service for any communication of the High Court of the Canton of Zurich and/or the Federal Office of Justice to this Court, the parties and Brandon Ervin; invite Brandon Ervin to the deposition once authorization is granted; verify and confirm the identity of Brandon Ervin before testamentary evidence is taken; supervise the testimony of Brandon Ervin from the Swiss offices of Quinn Emanuel at Dufourstrasse 29, 8008 Zurich, Switzerland (or, if required, from another location in the canton of Zurich, Switzerland); instruct the witness on their rights and obligations as per Article 21 of the Hague Convention; and ensure that the testimony is conducted in accordance with those rights and obligations.

11. The U.S. counsel of the parties, which the Court upon request of the parties hereby also appoints as commissioners are the following:

- a. For Google: Greg Lanier, Sasha Mayergoyz; Tracy Stitt, Michael Lavine, Rita Yoon, Edwin Garcia from JONES DAY, 1755 Embarcadero Road Palo Alto, CA 94303, USA; and Matt Warren, Jen Kash, and Erika Warren from Warren Lex LLP, 2261 Market Street, No. 606 San Francisco, California, 94114.

b. For Brazos: Joseph M. Abraham, Timothy Dewberry, Cliff Win, Jr., Alden Lee from Folio Law Group PLLC, and Gregory P. Love, Mark D. Siegmund, and Melissa S. Ruiz from Steckler Wayne Cherry & Love, PLLC.

12. In addition to the U.S. counsel and commissioners listed above and to the Swiss Commissioner, it is also requested that client representatives for each party be allowed to be present, and that a videographer and a stenographer be present to take and record a verbatim transcript of all testimony and proceedings in the English language and that the transcript of the testimony be authenticated. When necessary, persons belonging to the information technology departments of the law firms of U.S. counsel may enter the rooms where U.S. counsel are remotely attending the deposition. U.S. counsel, the party representatives, the videographer, and the stenographer may attend the deposition remotely. The Swiss Commissioner, Brandon Ervin and potentially any of the appointed other commissioners may attend the deposition by videoconference from the same location in Zurich or, if required, may also attend remotely from separate locations in the canton of Zurich, Switzerland. When necessary, persons belonging to the IT department of the Quinn Emanuel law firm where the deposition is held may enter the room where the Swiss Commissioner and/or Ms. Brandon Ervin are remotely attending the deposition.

13. As mentioned, it is requested that the commissioners take Brandon Ervin testimony in the English language (to which Brandon Ervin has agreed) under oath or affirmation, and that the Swiss Commissioner be allowed to administer such oath or request for affirmation on Brandon Ervin in accordance with United States law, as follows: "Do you swear or affirm that the testimony you are about to provide is the truth, the whole truth, and nothing but the truth?"

14. It is also requested that after giving testimony, Brandon Ervin be allowed after completion of the transcript to review, submit any errata, and sign the transcript of their testimony,

and that the signed, transcribed, and videotaped testimony together with any documents marked as exhibits be transmitted to the parties' U.S. counsel as soon as possible thereafter.

15. Accordingly, it is hereby requested that you grant assistance and authorize the Swiss and U.S. commissioners appointed above to question Brandon Ervin under oath or affirmation at the remote deposition at some time agreeable to all involved in February or March 2023 and that a verbatim transcript and videotape be prepared and be transmitted to the parties' U.S. counsel for submission and use before this Court.

16. It is also requested that you inform the Swiss Commissioner, this Court, and the parties through their above-mentioned U.S. counsel of your approval of this Court's request and of all relevant dates and times determined by you for the production of the aforementioned requested testamentary evidence of Brandon Ervin. This Court and U.S. counsel hereby appoint Mr. Olivier Buff to file the necessary application for authorization with you and act as the agent of service in Switzerland for any and all communication from you in this respect. As mentioned above, Mr. Olivier Buff's professional address in Switzerland for purpose of your communications is: Dufourstrasse 29, 8008 Zurich, Switzerland.

17. This Court expresses its appreciation to the High Court of the Canton of Zurich and the Federal Office of Justice for its courtesy and assistance in this matter and states that this Court shall be ready and willing to assist the courts of Switzerland in a similar manner when required. This Court is also willing to reimburse (through the Parties) the competent judicial authorities of Switzerland for any costs incurred in executing this request for judicial assistance. This Court extends to the competent judicial authorities of Switzerland the assurances of its highest consideration.

This Letter of Request is signed and sealed by Order of the Court made on the date set forth below:

IT IS SO ORDERED

SIGNED:

February 7, 2023


HON. ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE